



U.S. Department of Justice
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January 29, 2009
(By e-mail & U.S. Mail)

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RE:

Gulfco Marine Maintenance Superfund Site, Freeport, Texas --
Follow up on Morriss Letter of January 9, 2009

Dear Counsel:

Thank you for having Mr. Morriss summarize your positions in his letter of January 9, 2009 ("January 9 Letter"). The federal government has a different understanding of the points addressed by the January 9 Letter. Indeed, when one compares the January 9 Letter to the one I sent you on September 11, 2008, I think we

all can see how much differently this Site and its history are viewed by the federal government and the PRPs. While our disagreements may be large, perhaps even comprehensive, there is some benefit in our all being able to see these differences and disagreements, so those last two letters perhaps served some use.

Without trying to unravel all the disagreements reflected by the two letters, please note at least the following:

1) Content and Form of Enforcement Order for Tank Removal:

The January 9 Letter suggests that further discussion on one topic might be useful: the content and form of the enforcement order that could govern tank removal at the Site.

I believe we have worked through with you previously the federal government's reservations on a number of the language changes sought by the PRPs. For example, the PRPs should not expect that such an order would include the kinds of language that the PRPs proposed on some issues (e.g., the PRPs' proposals for paragraphs 11, 12, 23, 80, or 98). On the other hand, some of the adjustments proposed previously by the PRPs might be workable (e.g., some of your proposal for paragraph 74). * If the PRPs are willing to discuss an enforcement instrument that conforms to EPA's language on the topics addressed by paragraphs 11, 12, 23, 80, and 98 – rather than the PRPs' prior proposals -- please let Barbara Nann know.

2) Speedier Work on the RI/FS Remains Good for All:

We disagree with a number of the statements in the January 9 Letter relating to what work remains for the Site and what decisions have or haven't been made about analysis and clean up of the Site.

For example, additional sampling work likely will be required, especially on "eco" risk questions, and critical risk assessment work remains to be done. Once again, the sooner the RI/FS is completed the more everyone will know about the ultimate fate of this Site. From everything I have heard you say and from my discussions with EPA's RPM, it appears that you could complete the RI/FS much faster than the deadlines set by the schedule directed in the extant unilateral RI/FS order. Conclusion of that work could only help the parties know sooner and with more certainty what if any other clean up work will be needed and whether that work or the resulting clean-up might affect future use of the Site. (And thank you for the land use information conveyed by the

* Paragraph references are to draft Order on Consent for Removal Action denoted by the footer 'AUSTIN248155.1'.

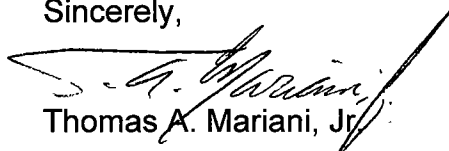
January 9 Letter. If, at your convenience, you could supply Barbara Nann with authenticated copies of any of the final land use restrictions, I am sure that would be a help to the process.)

I appreciate that you are confident that you know the likely remedial needs for the Site and its likely future use; your predictions may well be right. But EPA does not think the time for making sufficiently reliable predictions is yet here. Before EPA makes its predictions and determinations for this Site, it seeks to have before it what it considers the appropriate amount and type of information and analysis, which it hopes to secure through - among other sources - your completion of the RI/FS. Here, EPA's conclusion continues to be that the delisting of a portion of the Site would not be prudent at this time, given the gaps in information and analysis still to be filled in by ongoing measures such as the RI/FS. It may be that EPA has the authority to delist portions of a site from the NPL before the completion of a ROD or even an RI/FS but having the authority is not the same as deciding when it is prudent to employ that authority.

3) Past Costs

Demand for payment of past costs has been made on your clients previously. Interest continues to accrue; please pay the costs previously demanded.

Sincerely,



Thomas A. Mariani, Jr.

Cc: B. Nann & G. Miller

**Letter to Counsel for some of Respondents to Gulfco Marine RI/FS Unilateral
Administrative Order, CERCLA Docket No. 06-05-05A; from T. Mariani; Jan. 29, 2009.**